

Railroad Use Only
NSR File No. 1162605

NCRR File No. o_h-055+1258
AC:

WIRELINE AGREEMENT

THIS AGREEMENT, made and entered into by and between NORTH CAROLINA RAILROAD COMPANY, a North Carolina corporation, hereinafter styled "Company"; and CITY OF DURHAM, a North Carolina government entity, hereinafter styled "Licensee"; and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, hereinafter styled "NSR";

W I T N E S S E T H:

WHEREAS, it is proposed by Licensee to install, maintain, operate and remove three (3) electric power wires, encased within one of two (2) 1.0-inch diameter metal conduits, under and across the right of way or property and any tracks of Company, located at Milepost H-055 plus 1258 feet, Valuation Station 2818 plus 79, at or near Durham, Durham County, North Carolina; the same to be located in accordance with print of Drawings marked Exhibits A1-A2, dated October 14, 2011, attached hereto and made a part hereof (hereinafter called "Facilities").

WHEREAS, Company is willing to permit this proposed wireline, but only upon the following terms and conditions.

NOW, THEREFORE, for and in consideration of the premises, payment of a one-time application fee by Licensee to NSR of TWO HUNDRED AND NO/100 DOLLARS (\$200.00), and also a one-time non-refundable fee to Company of FIVE THOUSAND NINE HUNDRED EIGHTY-NINE AND 95/100 DOLLARS (\$5,989.95); and of the covenants hereinafter made, Company does hereby permit and grant to Licensee insofar as Company has the right to do, without warranty and subject to all encumbrances, covenants and easements to which Company's title may be subject, the use and occupation of so much ground as may be necessary for the Facilities. In the event that Licensee shall install additional cables into conduits covered by this agreement, a separate application will be required and, if approved, additional fees will be payable. This permit and grant to Licensee is made upon the following terms and conditions, to-wit:

1. Licensee will construct and maintain the Facilities, at its expense, in such manner as will not interfere with operations of Company or endanger persons or property of Company, and in accordance with (a) plans and specifications (if any) shown on said print(s) and any other specifications prescribed by Company, (b) applicable regulations prescribed by statute or by governmental authority, and (c) applicable specifications of the National Electrical Safety Code when not in conflict with plans, specifications or regulations mentioned in (a) and (b) above.

2. If the Facilities cause degradation of the signal, communications or other electronic facilities of Company, or endanger the personnel of Company or anyone else entitled to be on Company's property, through inductive or electrostatic interference or otherwise, Licensee, at the request of Company, and at Licensee's expense, will modify the Facilities to the satisfaction of Company so as to eliminate such degradation or danger. Such modification may include, without limiting the generality of the foregoing, transposing circuits or providing additional shielding, filters, reactances or any other corrective measure deemed necessary.

3. Notwithstanding any other provision of this Agreement, it is mutually understood, agreed and covenanted that Licensee accepts this Agreement as a mere license and assumes all risk of damage to its property by reason of its occupation of the premises herein described, caused by any defects therein or business carried on therein, whether caused by the negligence of Company, its officers, agents or employees, or otherwise, and Licensee hereby indemnifies Company, its officers, agents, and employees, from and against any such liability for said damage. This indemnity shall survive any termination of this Agreement.

4. If Company shall make any change or addition on its right of way at or near the Facilities of Licensee affecting the character, height or alignment of any of Company's power lines, communication, signal or other wires or electrical apparatus, or shall place structures or additional wires or electrical apparatus upon its said right of way, or shall make on its said right of way any change to any line, grade, track, roadbed, installations, works or structures or in the use of any such line, grade, track, roadbed, installations, works or structure, which would be affected by the Facilities of Licensee or by the use thereof, Licensee shall within thirty (30) days of written notice from the Company to Licensee, at Licensee's sole cost and expense, make such changes in the location and character of the Facilities as, in the opinion of Company, shall be necessary or appropriate on account of any such changes or additions.

5. Licensee hereby agrees, if permitted by law, to indemnify and save harmless Company, its officers, agents and employees, from and against any and all liability, claims, loss, damage, expense (including attorney's fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever, occurring or arising in any manner from the installation, maintenance, operation, presence or removal or failure to properly install, maintain, operate or remove the Facilities, unless such loss, damage or injury shall be caused solely by the negligence of Company. This indemnity shall survive any termination of this Agreement. However, nothing contained herein shall be deemed to waive any defense of sovereign immunity which might otherwise be available or to limit the rights of the Licensee to defend claims against Licensee as a political subdivision of the state of North Carolina.

6. No work of any character shall be started on the property until Certificates of Insurance, specifying that the policies have been furnished and accepted by Company as evidence that Licensee, Contractor, and Subcontractor maintain the following insurance coverages:

(a) Comprehensive General Liability Insurance having a combined single limit of not less than \$2,000,000 per occurrence for all loss, damage, cost and expense, including attorney's fees, arising out of bodily injury, liability and property damage liability during the policy period. Such policy shall be endorsed to name Company as an additional insured and shall include a severability of interests provision. In addition, Licensee's policy shall be endorsed to reflect Contractual Liability Insurance specifically relating to the indemnity provisions of this agreement. Any exclusion for construction or demolition activities (including installing wells or bore holes, but not for work done by means of a hand augur) conducted within 50 feet of railroad tracks shall be deleted from Licensee's policy.

(b) In the event Licensee cannot obtain contractual liability insurance to cover the obligations assumed under this Wireline Agreement, Licensee or its contractor shall procure and furnish to Company a Railroad Protective Liability Insurance Policy having a combined single limit of \$2,000,000 per occurrence and \$6,000,000 aggregate. Said policy shall name Company as the named insured.

(c) Workers' Compensation Insurance in satisfaction of statutory requirements of the state where the property covered by this agreement is located. Also, Employers' Liability Insurance having limits of not less than \$500,000 each accident, \$500,000 per disease - policy limit, and \$500,000 per disease - each employee.

(d) Automobile Liability Insurance having a combined single limit of not less than \$500,000 per occurrence. Said policy shall name Company as an additional insured and shall include a severability of interests provision.

(e) The insurance required herein shall be of such form and content as may be acceptable to Company. Evidence of such insurance (a certificate of insurance for the general liability insurance policy and the original policy of Railroad Protective Liability Insurance) must be furnished to Company at Property Department, North Carolina Railroad Company, 2809 Highwoods Blvd, Suite 100, Raleigh, NC 27604-1000 (or such other current address provided to Licensee) and approved by Company prior to Licensee's entry on the Premises. The insurance required herein shall not limit the liability assumed by Licensee under this Agreement or consent.

(f) Notwithstanding the provisions of section 6(a), 6(c), and 6(d), Licensee (City of Durham), pursuant to the State of North Carolina Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

7. In the event that Licensee defaults in performing its obligations pursuant to this Agreement, Company may terminate this Agreement by giving written notice to Licensee, provided that Company has given Licensee written notice of default and Licensee has failed, within a thirty day period, to correct the default. Upon such termination, the Facilities shall immediately be removed by Licensee at its sole cost, risk and expense. In the event Licensee fails to remove the Facilities, Company may elect to do so and shall bill Licensee for any cost of removal, which costs shall be reimbursed by Licensee immediately upon receipt of the bill. Company may maintain, repair or renew the Facilities at the sole cost and expense of Licensee if necessary to protect the interests of Company, if Licensee has been requested to do so in writing and has failed to do so promptly; provided, however, Company shall not be obligated to so maintain, repair or renew the Facilities or any part thereof.

8. Licensee shall give Company seventy-two (72) hours' advance notice (or less in case of emergencies) of any work to be performed on the premises of Company. Licensee agrees to pay any costs incurred by Company for the purpose of protection and inspection considered necessary by Company during construction, maintenance, operation, modification, replacement and/or removal of the Facilities.

9. If Licensee fails to take any corrective measures requested by Company in a timely manner or if an emergency situation is presented which in the Company's judgment requires immediate repairs to the Facilities, Company may undertake such corrective measures as it deems necessary or desirable at Licensee's expense to be reimbursed by Licensee upon rendering of a bill therefor.

10. The details of the Facilities are to be at the option of Licensee, subject to the approval of Company, and in case of failure of Licensee to do the work as herein specified, Company reserves the right to remove the Facilities from Company's premises at the expense of Licensee, and to terminate this Agreement upon ten (10) days' written notice to Licensee.

11. Company shall furnish, at the cost of Licensee, labor and materials to support its tracks and protect its traffic during the installation, maintenance, repair, renewal or removal of the Facilities.

12. It is further agreed between the parties hereto that the premises shall be used by Licensee only for the Facilities, and for no other purpose without the written permission of Company.

13. Licensee shall not assign this Agreement without the written consent of Company which may be withheld in the sole discretion of Company.

14. The word "Company" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Company. Said term also shall include Company's officers, agents and employees, and any parent company, subsidiary or affiliate of Company and their officers, agents and employees.

15. This Agreement may be terminated by either party hereto upon sixty (60) days' written notice to the other party. During said sixty day period, Licensee shall remove the Facilities from Company's premises and restore said premises to a condition satisfactory to Company. If Licensee fails to remove the Facilities within the aforesaid sixty day period, Company shall elect: (a) to become the owner of the Facilities without any claim or consideration whatsoever therefor by or to Licensee, its successors or assigns, or (b) to remove the Facilities and all property of Licensee from the premises of Company at the expense of Licensee. Licensee agrees to reimburse Company for any and all costs of such removal immediately after receipt of a bill therefor. No termination of this Agreement shall affect any liability incurred by either party hereto prior to the effective date of such termination.

16. The terms set forth in the attached **Exhibit B**, consisting of two pages and titled "Agreement and Consent of Norfolk Southern Railway Company," are incorporated into this Agreement as if set forth verbatim herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate, each part being an original, as of the ____ day of _____, 20__.

COMPANY:

NORTH CAROLINA RAILROAD COMPANY

By: _____

Title: _____

LICENSEE:

CITY OF DURHAM

By: _____

Title: _____

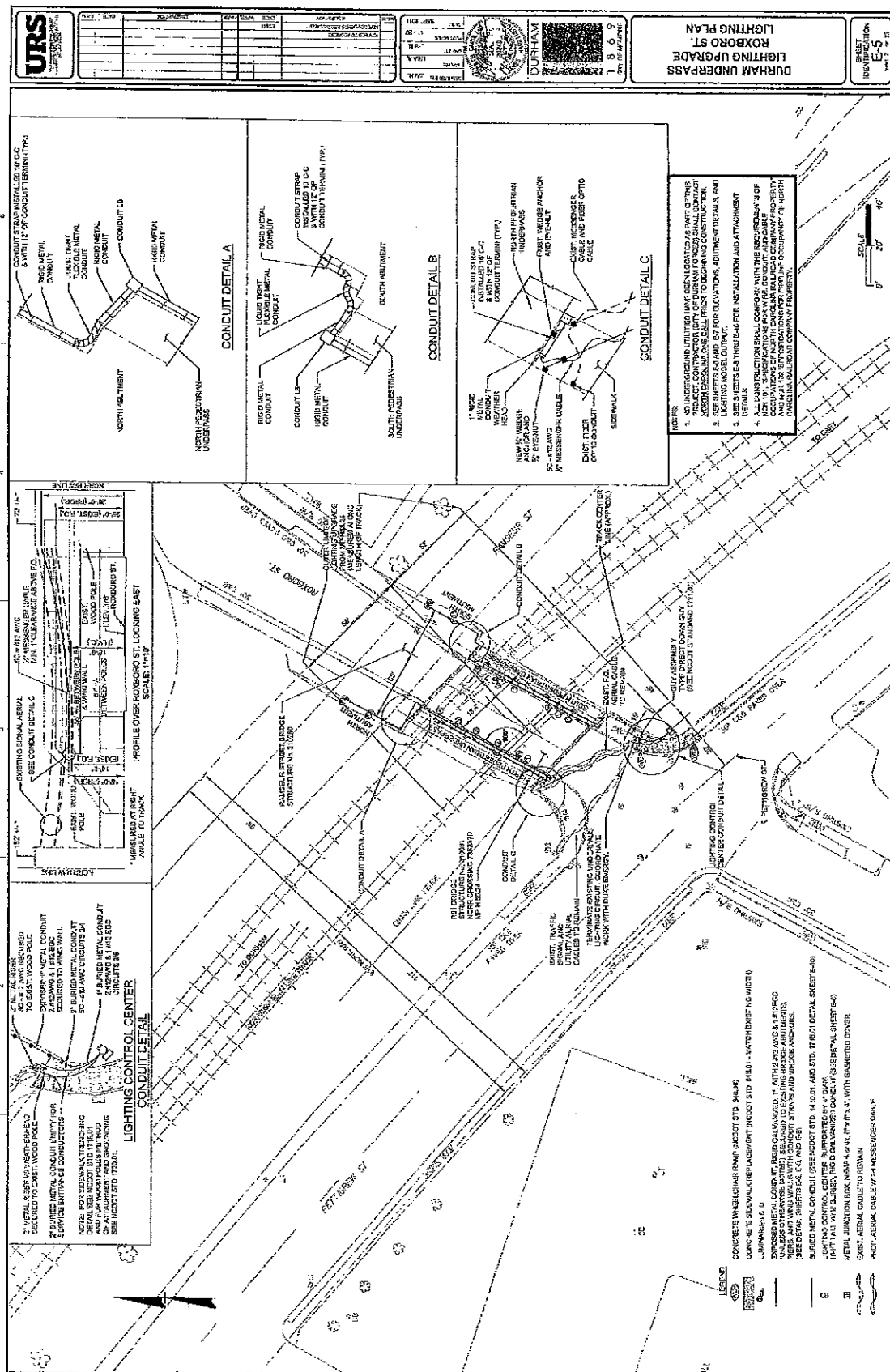
NSR:

NORFOLK SOUTHERN RAILWAY COMPANY

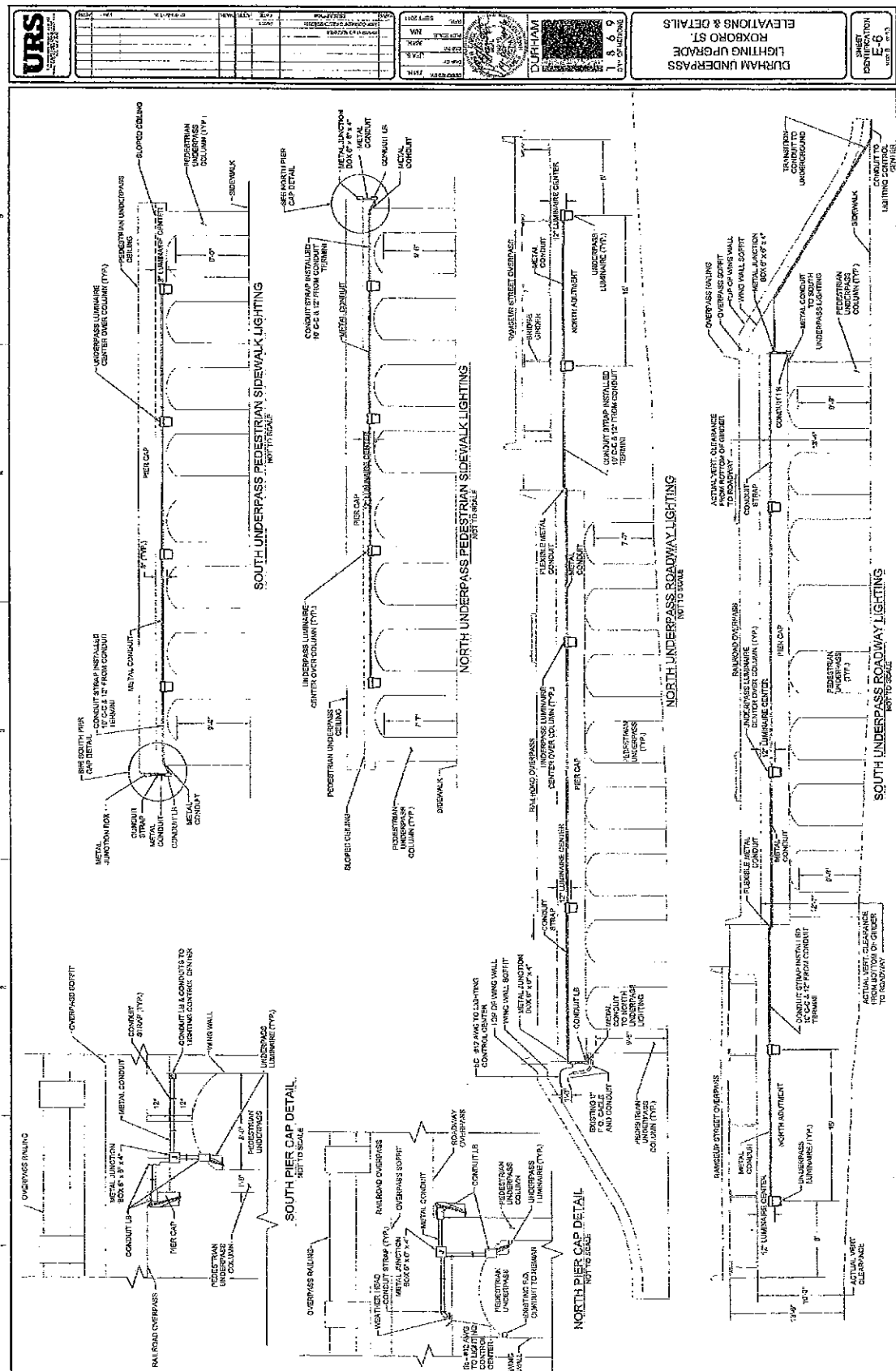
By: _____

Title: _____

Exhibit A1
Milepost H-055+1258



Parcel Numbers 7, 7d, 7e, 7G, 20 of V-24 & 24e/S-14b



Parcel Numbers 7, 7d, 7e, 7G, 20 of V-24 & 24e/S-14b

EXHIBIT B**AGREEMENT AND CONSENT OF NORFOLK SOUTHERN
RAILWAY COMPANY**

WHEREAS, Company, Licensee, and NSR desire to enter into the attached Agreement regarding the property described therein (the "Premises").

NOW THEREFORE, in consideration of the above recitals and the promises and agreements contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, NSR, Company, and Licensee agree as follows:

1. NSR gives its consent to the Agreement pursuant to the terms and conditions of this Consent. All of the terms of this Consent are hereby incorporated by reference into the Agreement. The term "NSR" as used in this Agreement and Consent and as used in the Agreement shall include NSR's officers, agents and employees, and any parent company, subsidiary or affiliate of NSR and their officers, agents and employees.
2. The parties agree and understand that any right or claim of Company held in or by virtue of the Agreement shall also inure to the benefit of, and be enforceable by NSR or by any successor or assignee of Company or NSR, and NSR shall not be responsible for any obligations, duties or indemnities of Company to Licensee under the Agreement. NSR reserves any pre-existing rights, claims and defenses against Company and Licensee and said rights, claims and defenses shall not be waived or limited in any way by the Agreement.
3. Licensee understands that NSR makes no warranties or representations regarding the condition of or title to the Premises. Licensee takes the Premises "AS IS" and expressly waives any and all claims against NSR relating to or arising from the condition of or title to the Premises and the property surrounding the Premises, including without limitation, any claims and costs relating to environmental contamination under any applicable laws (such as, without limitation, those which might arise under CERCLA, RCRA, and the North Carolina Oil Pollution and Hazardous Substances Act).
4. Without the written consent of NSR, (i) neither the Agreement nor this Consent may be assigned in whole or in part by Company or Licensee; (ii) Licensee shall not enter into any sublicense or sublease of the Premises; and (iii) the Agreement shall not be amended by Company or Licensee. No consent by NSR to any sublease, sublicense, assignment, or amendment of the Agreement shall be construed to be consent to any further sublease, sublicense, assignment, or amendment of the Agreement.
5. In consideration of the rights granted by NSR to Licensee by this Consent, Licensee agrees to the extent allowed by law, to indemnify and hold NSR harmless to the same extent as Company is indemnified and held harmless pursuant to the Agreement. In addition, without limiting the indemnities provided in the Agreement, to the extent allowed by law, Licensee specifically shall indemnify and hold harmless NSR from and against any and all attorney's fees, costs, expenses, liabilities, injuries, claims (including third party claims and any claims under any environmental laws and regulations such as CERCLA, RCRA, and the North Carolina Oil Pollution and Hazardous Substances Control Act) and damages arising from or related to (1) the Agreement; (2) any acts or omissions by Licensee at or near the Premises, (3) Licensee's violations of environmental laws and regulations, and (4) environmental contamination caused by Licensee. For purposes of this paragraph, the term Licensee shall mean its officers, employees, agents, contractors, guests or invitees.
6. NSR must be given at least thirty (30) days notice prior to the placement of any equipment, structure, facility, fixture, or other improvement on the Premises other than those permitted by this Agreement.
7. Company and NSR agree that, by entering into this Consent, (i) NSR is not making any admission regarding any matter between NSR and Company; (ii) Company is not making any admission

regarding any matter between NSR and Company; (iii) NSR is not waiving any claim or defense against Company or any affiliate of Company; (iv) Company is not waiving any claim or defense against NSR; (v) NSR does not waive or prejudice any position, claim or defense with regard to any legal or administrative proceedings in which Company or its affiliates and NSR are currently involved or may become involved, including but not limited to any claim or defense with respect to any leasehold rights, environmental obligation or liability, possessory rights, or holdover or non-holdover status of Company; and (vi) Company does not waive or prejudice any position, claim or defense with regard to any legal or administrative proceedings in which Company or its affiliates and NSR are currently involved or may be involved, including but not limited to any claim or defense with respect to any leasehold rights, environmental obligation or liability, possessory rights, or holdover or non-holdover status of Company.

8. Licensee acknowledges that NSR has not made any inspection of the Premises and that the Premises are located at or near active or inactive railroad facilities, structures, or related property.
9. No work of any character shall be started on the property until Certificates of Insurance, specifying that the policies have been furnished and accepted by NSR as evidence that Licensee, Contractor and Subcontractor maintain the following insurance coverages:
 - (a) Comprehensive General Liability Insurance having a combined single limit of not less than \$2,000,000 per occurrence for all loss, damage, cost and expense, including attorney's fees, arising out of bodily injury, liability and property damage liability during the policy period. Such policy shall be endorsed to name NSR as an additional insured and shall include a severability of interests provision. In addition, Licensee's policy shall be endorsed to reflect Contractual Liability Insurance specifically relating to the indemnity provisions of this agreement. Any exclusion for construction or demolition activities (including installing wells or bore holes, but not for work done by means of a hand augur) conducted within 50 feet of railroad tracks shall be deleted from Licensee's policy.
 - (b) In the event Licensee cannot obtain contractual liability insurance to cover the obligations assumed under this Wireline Agreement, Licensee or its contractor shall procure and furnish to NSR a Railroad Protective Liability Insurance Policy having a combined single limit of \$2,000,000 per occurrence and \$6,000,000 aggregate. Said policy shall name NSR as the named insured.
 - (c) Workers' Compensation Insurance in satisfaction of statutory requirements of the state where the property covered by this agreement is located. Also, Employers' Liability Insurance having limits of not less than \$500,000 each accident, \$500,000 per disease - policy limit, and \$500,000 per disease - each employee.
 - (d) Automobile Liability Insurance having a combined single limit of not less than \$500,000 per occurrence. Said policy shall name NSR as an additional insured and shall include a severability of interests provision.
 - (e) The insurance required herein shall be of such form and content as may be acceptable to NSR. Evidence of such insurance (a certificate of insurance for the general liability insurance policy and the original policy of Railroad Protective Liability Insurance) must be furnished to NSR at NSR Risk Manager, Three Commercial Place, Norfolk, VA 23510 (or such other current address provided to Licensee) and approved by NSR prior to Licensee's entry on the Premises. The insurance required herein shall not limit the liability assumed by Licensee under this Consent or the Agreement.
 - (f) Notwithstanding the provisions of section 6(a), 6(c), and 6(d), Licensee (City of Durham), pursuant to the State of North Carolina Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.